

Applicant: Hoogland  
Application Serial No.: 10/529,329  
Filing Date: May 23, 2005  
Docket No.: 294-211 PCT/US

### **REMARKS/ARGUMENTS**

The Final Office Action dated March 5, 2009 and the references cited therein have been carefully considered. In response to the Office Action, Applicant has amended Claims 1, 12, 19 and 24, canceled Claims 2-4 and added new dependent Claims 28-30 which, when considered with the remarks set forth below, are deemed to place the case with Claims 1, 5-7 and 10-30 in condition for allowance.

#### ***Claim Rejection – 35 USC §112, First Paragraph***

Claim 27 has been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that the specification does not expressly or inherently describe the second supporting means being loosely retained by the cross supports.

Applicant respectfully disagrees. In particular, Applicant submits that it should be clear without a doubt from the specification of the present application that the second supporting elements 21 are loosely retained within the cross supports. For example, on page 7 of the specification, with reference to Figure 3, these second supporting elements are described as being clamped between the top deck and the bearing construction. On page 8, it is then described that these supporting elements are fitted only just before assembling, (i.e., not during injection molding). It is further disclosed in the specification that the shrinkage of these supporting elements is smaller than that of the surrounding plastic. This necessarily means that there must be some play between the elements 21 and the surrounding plastic. Moreover, on page 10 it is stated that these supporting elements can be easily placed and removed, meaning again that there has to be a loose retention.

Accordingly, for all of the foregoing reasons, Applicant respectfully traverses the rejection of Claim 27 under 35 U.S.C. §112, first paragraph.

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***Claim Rejection – 35 USC §112, Second Paragraph***

Claim 12 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for reciting the term “preferably.” In response, Applicant has amended Claim 12 to delete this term. In this regard, Applicant has added a new dependent Claim 30 directed to the “preferable” subject matter deleted from Claim 12. Accordingly, it is believed that the Claim 12 rejection under 35 U.S.C. §112, second paragraph has been overcome.

***Claim Rejections – 35 USC §102 and §103***

Further in the Office Action, Claims 1-7, 10-12, 19, 20, 24 and 27 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,880,092 to Seeber. Claims 1-7, 10-12, 19, 20, 24, 25 and 27 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,735,154 to Hemery. Claims 1-7, 10-12, 19, 20, 24 and 27 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,868,080 to Wyler. Claims 1-7, 10-12, 19 and 20 have been rejected under 35 U.S.C. §102(e) as being anticipated by newly cited U.S. Patent No. 6,955,128 to Apps. Claims 1-7, 10-12, 19, 20, 24, 25 and 27 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,622,642 to Ohanesian. Finally, Claims 11 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Apps Patent in view of U.S. Patent No. 6,584,914 to Koefeldt.

**Independent Claims 1, 19 and 24**

In response, Applicant has amended independent Claims 1, 19 and 24 to define a pallet including a top deck, a bearing construction and first and second supporting means, wherein the bearing construction includes a plurality of cross supports made integral with the bearing construction and separable from the top deck. It is respectfully submitted that none of the cited references, taken alone or combined, teaches or suggests a bearing construction having integral cross supports, as set forth in amended independent Claims 1, 19 and 24.

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Instead, the cited Seeber patent clearly discloses an integrally made pallet, wherein the bearing construction and top deck are made in one piece. Moreover, the first and second supporting means (34, 28, 30) are included during molding and are thus fully enclosed. The Examiner refers to the under portions in the top deck of the Seeber patent as cross supports. However, it is clear that these portions are part of the top deck and are not separable from the top deck, as defined in amended Claims 1, 19 and 24.

Turning to the Hemery patent, here too, the only elements that can be considered cross supports, as defined in Claims 1, 19 and 24, are the integral portions of the top deck opposite the upper surface of the deck. Again, these portions are not integral with the bearing construction, nor are they separable from the top deck, as defined in amended Claims 1, 19 and 24.

Moreover, the Hemery patent does not disclose stringers and a top deck. Instead, this patent discloses two superimposed panels separated by support columns (8 – 88). Rods are inserted in two perpendicular directions and are bolted in place. Thus, the rods are not fully enclosed within the pallet so that they can still be manipulated and can still corrode or otherwise be influenced by the environment. The pallet according to the present invention prevents this.

Turning now to the Wyler patent, the elements referred to by the Examiner as second supporting means are again held in the top deck of the disclosed pallet. Thus, the only elements that can be considered cross supports are integral elements of the top deck and are, therefore, not separable from the top deck. Therefore, this patent does not disclose cross supports integral with the bearing construction and separable from the top deck, as defined in amended Claims 1, 19 and 24.

The Apps patent discloses a “double-deck” pallet, wherein the only elements that can be considered cross supports are the portions of the intermediate platform (20). However, this platform is an entirely separate element that is not integral to either the bearing construction or the top deck. Therefore, this patent does not disclose cross supports integral with the bearing construction and separable from the top deck, as defined in amended Claims 1, 19 and 24.

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Finally, the Ohanesian patent also discloses a “double-deck” pallet separated by independent bearing elements (310). Again, even assuming that the structural rods (120) can be considered second supporting means, it is clear that these rods are attached to the bottom of the upper deck (250). Thus, the only elements that can be considered cross supports are the portions on the underside of the upper deck that receive the rods. As such, these portions are not integral with the bearing construction, nor are they separable from the top deck.

It is further respectfully submitted that a person skilled in the art would not look to such “double-deck” pallet references when trying to improve on single deck, stringer borne pallets, since the rigidity problems are totally different. Moreover, since none of the documents discloses enclosing first support members in the stringers and second support members fully enclosed within the pallet, extending substantially perpendicular thereto, even a combination of these references would not result in the claimed invention.

Accordingly, it is respectfully submitted that amended Claims 1, 19 and 24, and the claims that depend therefrom, patentably distinguish over the prior art.

#### New Dependent Claim 28

Applicant has also added a new dependent Claim 28, which defines the first supporting means as having flat portions extending between the bearing elements and lips extending upwardly from the flat portions into an interior of the bearing elements. It is respectfully submitted that none of the cited prior art references, taken alone or combined, discloses first supporting means having lips extending upwardly into an interior of the bearing elements, as defined in new dependent Claim 28.

#### New Dependent Claim 29

Applicant has also added a new dependent Claim 28, which defines a pair of second supporting elements provided for each row of bearing elements, wherein second supporting means are provided on opposite sides of each bearing element. It is respectfully submitted that none of the cited prior art references, taken alone or combined, discloses the features of new dependent Claim 29.

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***Conclusion***

In view of the foregoing amendment and remarks, favorable consideration and allowance of the application with Claims 1, 5-7 and 10-30 are respectfully solicited. If the Examiner believes that a telephone interview would assist in moving the application toward allowance, he is respectfully invited to contact the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

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